Supreme Court, U.S.
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Nos. 95-1197 and 95-1200

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

ZELL MILLER, *et al.*,
Cross-Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA (No. 95-1200) *and* NATIONAL ASSOCIATION OF BROADCASTERS (No. 95-1197), *et al.*,
Cross-Respondents.

On Cross-Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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CROSS-RESPONDENTS' BRIEF IN RESPONSE TO CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI

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March 27, 1996

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RULE 29.6 LIST

In their Petition for a Writ of Certiorari (filed Jan. 26, 1996), the Petitioners listed their parent corporations and nonwholly owned subsidiaries. Pursuant to Rule 29.6, that list is hereby incorporated into this document.

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The content of the Candidates' Conditional Cross-Petition for a Writ of Certiorari demonstrates that there is no material dispute among the parties about the importance of resolving on the merits the issue of the FCC's authority to pre-empt state law causes of action under Section 315(b). Accordingly, the Court should grant the parties' Petitions and Cross-Petition and determine whether the FCC's Declaratory Ruling is authorized by law.

1. The Broadcasters and the United States have already asked this Court to review the Eleventh Circuit's

determination that, despite express authorization from Congress in the Administrative Procedure Act, the FCC may not pre-empt state law through the use of a declaratory order. See Pet. of National Association of Broadcasters, *et al.*, at i, 16-20; Pet. of the United States at 18-22. The Candidates also recognize the importance of the reviewability of declaratory orders, arguing that "this Court should clarify the circumstances under which a Declaratory Ruling of the FCC is subject to judicial review." Conditional Cross-Pet. at 6-7. For the reasons stated in the Petitions of the Broadcasters and the United States, the Court should review this question.

2. The Candidates' other question for review is "whether Congress intended the preemption effected by the Declaratory Ruling." *Id.* at i. In their petition, the Broadcasters did not present this question for review because it was the alternative rationale of the FCC in the Declaratory Ruling. The Broadcasters firmly believe that the Declaratory Ruling can and should be sustained on the basis that the FCC properly invoked its own pre-emption authority as delegated by Congress. If this Court grants review on that question and agrees with the Broadcasters, it will be unnecessary to decide whether Congress intended to pre-empt state law causes of action under Section 315. Nevertheless, the Broadcasters do not oppose review of this latter question.

Respectfully submitted,

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